SBA

Subcontracting Assistance Program Post Award

Small Business Administration Office of Government Contracting.



SMALL BUSINESS ADMINISTRATION STANDARD OPERATION PROCEDURE (SOP)

Subcontracting Assistance Program Post Award policies and procedures

SUBJECT: Subcontracting Program			
S.O.P. SECTION 60 NO. 03 REV 7			
INTRODUCTION:			
Purpose. This SOP outlines SBA's Subcontracting Assistance Program post-award responsibilities policies and procedures.			
 Personnel Concerned. All involved in administering SBA's post-award responsibilities for the Subcontracting Program 			
2. Directives Canceled. SOP 60 03 6.			
3. Originator. SBA's Office of Government Contracting.			
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Subcontracting Assistance Program Overview

1. What is the SB Subcontracting Assistance Program?

The Subcontracting Program establishes and carries out the statutes, regulations, processes, and procedures that ensure SB receives a "maximum practicable opportunity," to compete for and receive Federal Government subcontracts from large business (LB) (other-than-small-business) Federal Government contractors.

The Subcontracting Program has pre-award (before contract award), and post-award (after contract award) regulations, processes, and procedures. This SOP outlines the post-award Subcontracting Program's responsibilities. SBA's SOP 60-02-8 outlines the pre-award Subcontracting Program's responsibilities.

2. What is the Subcontracting Program's Purpose and Mission?

The purpose of the subcontracting assistance program is to increase the utilization of SB in Federal Government procurements by ensuring subcontracting opportunities are available for small business concerns. Small business concerns include small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, certified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.

The mission of the program is to provide an understanding of and monitor adherence to the Subcontracting Program's regulations, processes, and procedures to ensure subcontracting opportunities are being awarded to SB.

3. When is a Federal Government Acquisition Subject to SBA's Post-Award Subcontract Program Regulations, Processes, and Procedures?

Post-award subcontracting requirements are included in every Federal Government contract with the clause Utilization of Small Business Concerns. Compliance Reviews are performed on contracts with subcontracting plans. In accordance with section 8(d) of the Small Business Act, large businesses seeking to be awarded a Federal Government contract (awarded pursuant to the negotiated method of procurement) in excess of the subcontracting threshold that offers subcontracting possibilities, must submit a subcontracting plan to the appropriate contracting agency.

A Subcontracting Plan outlines the prime's intent to ensure the maximum practicable opportunity to award subcontracts to SB.

Subcontracting Assistance Program Overview (continued)

4. Who has oversight of the Subcontracting Program?

Section 8(d) of the Small Business Act provides the SBA with authority to develop, implement and manage the SB Subcontracting Assistance Program's regulations, processes and procedures. SBA implemented the post-award Subcontracting Assistance Program's rules in the Code of Federal Regulations (CFR) under 13CFR§125.3. SBA's SB Subcontracting Assistance Program's rule is further broken out into processes and procedures written in the Federal Acquisition Regulation (FAR) under title 48 of the CFR to be performed by the Federal Government's agency and contractors.

Although, SBA has oversight to monitor the compliance of both the Federal Government agency and contractors for contracts governed by the Subcontracting Program regulations, it is the responsibility of the Federal Agency who awarded the contract to monitor and enforce subcontract compliance throughout the life of the contract.

SBA is also authorized to enter into agreements with other Federal Government agencies or entities to conduct compliance reviews and otherwise further the objectives of the subcontracting program. The agreements that govern these reviews are outlined in a Memorandum Of Understanding (MOU). An MOU is reviewed annually and on an as-needed basis. Any updates to an MOU must be reviewed and approved by SBA's Office of Government Contracting, both the Associate Administrator and the Director of Government Contracting along with the Office of General Counsel. Copies of these agreements will be published on http://www.sba.gov.

5. What Are the Subcontracting Program's Rules and Regulations?

The Subcontracting Program's Rules and Regulations are written in the CFR, FAR and in Federal Government Agencies' supplements. The Federal Government contractor must adhere to the contract clauses agreed to in its contract. The most frequently used Subcontracting Program's rules and regulations are below. Due to the periodic update of regulations, reference the online electronic versions of the CFR (eCFR at https://www.acquisition.gov/).

13 CFR §125.3 What types of subcontracting assistance are available to small businesses: Provides information on subcontract exclusions, roles, and responsibilities.

Subcontracting Assistance Program Overview

5. What Are the Subcontracting Program's Rules and Regulations? Continued

- 13 CFR §121.404(e) When is the size status of a business concern determined: Provides subcontracting size information relevant to self-certification.
- 13 CFR §121.410 What are the size standards for SBA's Section 8(d) Subcontracting Program: Provides subcontracting size information.
- 13 CFR §121.411 What are the size procedures for SBA's Section 8(d) Subcontracting Program
- FAR 19.7 The Small Business Subcontracting Program: These are the Subcontracting Program processes and procedures for the Federal Government personnel and contractor's usage and payments of small businesses.
- FAR 52.219-9 Small Business Subcontracting Plan: These are the Subcontracting Program contract clauses for the OTSB Federal Government prime and sub-contractors.
 - **FAR 52.219-8** Utilization of Small Business Concerns: This details the policy and processes that enforce
- FAR 52.244-6 Subcontracts for Commercial Items
- FAR 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items

6. What is SBA's Post-Award Subcontracting Program Organizational Structure?

SBA's Office of Government Contracting (GC) under the direction of its Director ensures the Federal Government Contracting Community abides by the Subcontracting Program's guidance. Under the leadership of the Director, the Subcontracting Program Manager (SCPM) develops and manages the Subcontracting Program's processes and provides technical clarification, guidance, and training.

To execute the post-award Subcontracting Program's directives, processes, and procedures across the USA and outlying territories, SBA has Commercial Market Representative (CMR). The CMR works exclusively to execute the post-award Subcontracting Program's directives, processes, and procedures across the USA and outlying territories. The CMR is assigned to an SBA Area Office (AO). The Area Director (AD) and Deputy Area Director (DAD) manage the CMR to ensure they execute and manage the Subcontracting Program's policy, processes, and procedures as set forth by the SCPM.

For a listing of SBA AO visit www.sba.gov. Although, CMRs are assigned to a specific AO and managed by the AD and DAD, at the SCPM discretion CMR's will be required to assist other AO when necessary to further the objectives of the Subcontracting Program.

GC along with, SBA's Office of Policy, Planning, and Liaison (OPPL), and SBA's Office of the General Counsel (OGC) establishes the Subcontracting Program's regulations. OGC assist the SCPM with interpreting the Subcontracting Program's regulations.

CMR's Post-Award Responsibilities Under the Subcontracting Program

1. What are the CMR's Post-Award Subcontracting Program Responsibilities?

The CMR has been designated the SBA's principal agent to serve as reviewer and advisor in all post-award subcontracting matters outlined in Section 4(h) of the Small Business Act and further in 13CFR§125.3. The CMR will work exclusively on the responsibilities outlined in Section 4(h) of the Small Business Act using this SOP and directives from the Office of Government Contracting. Section 4(h) of the Small Business Act assigns the following responsibilities to the CMR: (1) helping prime contractors to find small business concerns that are capable of performing subcontracts; (2) for contractors awarded contracts with the clause Utilization of Small Business Concerns, (i) counseling on the responsibility of the contractor to maximize subcontracting opportunities for small business concerns; (ii) instruction on methods and tools to identify potential subcontractors that are small business concerns; and (iii) assistance to increase awards to subcontractors that are small business concerns through visits, training, and reviews of past performance; (3) providing counseling on how a small business concern may promote the capacity of the small business concern to contractors awarded contracts with the clause Utilization of Small Business Concerns; and (4) conducting periodic reviews of contractors awarded contracts containing the clause Utilization of Small Business Concern to assess compliance with subcontracting plans required under section 8(d)(6) of the Small Business Act..

Compliance Reviews will educate, monitor and evaluate compliance with the post-award subcontracting provisions detailed throughout the CFR and FAR and ensures SB receives subcontracting opportunities.

2. How will the CMR be Trained to Carry Out their Responsibilities?

CMRs will receive training to carry out their responsibilities from the SCPM and other key stakeholders. Training is mandatory and will be provided using web and telephone conference, videos and printed material.

3. What are the Certification Requirements for CMRs?

The CMR must have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification. The certification is not required for any person serving as a CMR until the date that is one calendar year after the date such person is appointed as a CMR. CMRs will work with the SPCM, AD and DAD on all certification and continuing learning credits requirements.

A CMR who was serving on or before November 25, 2015, must obtain their certification by November 25, 2020.

CMR's Post-Award Responsibilities Under the Subcontracting Program

4.How does a CMR Perform Roles and Responsibilities with Impartiality and Non-Preferential Treatment?

Regulations promulgated by the Office of Government Ethics (OGE) at 5 C.F.R. Subpart A, "General Provisions," and Subpart G, "Misuse of Position," set forth restrictions on the use of an Executive Branch employee's official title, position or authority in connection with private enterprises. Specifically, § 2635.101(b)(8) Employees shall act impartially and not give preferential treatment to any private organization or individual. This regulation requires that all Federal employees act impartially in the performance of their official duties, and § 2635.702, paragraphs (b) and (c), prohibit Federal employees from using their public office or title, or the authority associated with their office, in a manner that could be reasonably construed to imply that the government sanctions or endorses a private entity or its opinions, products, and services.

CMRs will not recommend individuals or entities or provide LB or SB business information to any individual or entity which includes government agencies and resource partners because doing so could be construed to imply preferential treatment and that SBA sanctions or endorses the recommended firm's products and services.

Also, CMRs will not distribute or promote any non-SBA Post Award Subcontracting Program materials or events, or maintain or distribute any non-SBA Post Award Subcontracting Program contact lists/directories.

There are self-service tools available to the public that facilitate the matching of individuals and entities and provide contact information for the distribution of material and promotion of events. These resources are available on SBA's SubNet system Resource page and are available at no cost, 24 hours/7days a week.

To ensure impartiality and non-preferential treatment when providing training to private entities, a CMR accepting an invitation to provide training to a private organization must make the training freely available in real-time or on-demand to the public. The CMR should advertise the training to the public 30 days prior to the training date and provide the training topic, date and the information to access the training (e.g., web link, social media, podcast, webinar, or teleconference information). When delivering training to a Federal organization, the CMR should ensure that the training is freely available to other Federal organizations in real time or on demand, using the same access methods.

Following these procedures will allow SBA's CMRs to carry out their roles and responsibilities without the appearance of or directly providing an endorsement of or preferential treatment to an organization or individual.

CMR's Post-Award Responsibilities Under the Subcontracting Program

5. How will CMRs Carry Out the Responsibilities Outlined in §13CFR125.3 (e)?

Details of the processes and procedures to perform the CMR duties will be provided by the SCPM and outlined in the CMR Desk Guide.

To ensure all customers receive the same quality information and assistance CMRs will utilize standardized documents, these processes and procedures, and provide Subcontracting Program counseling, training, and awareness through Compliance Reviews (CR) and SBA's Subcontracting Orientation, Assistance and Reviews (SOAR) Training Program. CRs are discussed in chapter 3 and SOARs in chapter 4 of this SOP.

6. How Does A CMR Facilitate the Matching of SB with LB?

CMR's will facilitate the matching of LB with SB and assist those wanting to locate or promote subcontracting opportunities and events by referring them to use the tools available to the public.

SBA's Subcontracting Network System (SubNet), the Dynamic Small Business Search (DSBS) and the Directory of Federal Government Prime Contractors with Subcontracting Plans are SBA specific tools that facilitate the matching of LB with SB.

SubNet

SubNet facilitates the matching of LB with SB by allowing firms to post and SB to search solicitations, notices of sources sought and outreach events. SubNet's Business Directory serves as a market research tool that identifies LB in specific industries and provides business contact information to include the organization's SB point of contact. SubNet bridges the gap between SB subcontractors and SB Subcontracting Opportunities. There is no cost to post or search SB Opportunities in SubNet and training videos are available by clicking "Help" on SubNet. SubNet is available 24 hours a day/7 days a week at www.sba.gov.

Anyone seeking an SB contractor for upcoming contracting opportunities or to distribute material and event information should be referred to SubNet. Anyone seeking to distribute material and event information to LB should be referred to SubNet. LB contact information can be exported from SubNet.

DSBS & SAM

The Dynamic Small Business Search (DSBS) is a database of SB contractors. DSBS facilitates the matching of LB with SB by identifying SB contractors. Anyone seeking an SB contractor for upcoming contracting opportunities or to distribute material and event information should be referred to DSBS. SB contact information can be exported from DSBS. The Dynamic Small Business Search (DSBS) bridges the gap between businesses seeking SB's products and services and SB soliciting their products and services. The Dynamic Small Business Search (DSBS) tool provides a marketing platform to SB at no cost 24 hours a day/7 days a week at http://www.dsbs.sba.gov/.

Although SBA maintains the Dynamic Small Business Search (DSBS) database, if an SB would like to be listed in DSBS, they must first register in the System for Award Management (SAM). SAM will review revenue/employee information inputted by a firm to validate their small business size status.

Chapter 2

CMR's Post-Award Responsibilities Under the Subcontracting Program

6. How Does A CMR Facilitate the Matching of SB with LB? Continued

DSBS & SAM: Continued

After validation, and activation of the SAM profile, the information in SAM is populated in DSBS. The SB can enter supplemental information about their business into DSBS. The DSBS supplemental pages allow the business to provide detailed information about their business specifications such as bonding levels and special certifications.

SAM is also a tool that facilitates the matching of SB and LB. Anyone seeking an SB contractor for upcoming contracting opportunities or SB and LB to distribute material and event information should be referred to SAM. Contact information available in SAM can be exported. SAM is available at no cost 24 hours a day/7 days a week at https://www.sam.gov/

Directory of Federal Government Prime Contractors with Subcontracting Plans

The Directory of Federal Government Prime Contractors with Subcontracting Plans is a listing of all Federal Government contracts awarded with a subcontracting plan for a specific fiscal year. This directory facilitates the matching of LB with SB by identifying LB contractors for SB to solicit their products and services. This directory bridges the gap between SB seeking possibilities to market their products and services and LB contractors that are required to subcontract with SB. The Directory of Federal Government Prime Contractors with Subcontracting Plans will assist small businesses by providing information that allows them to connect with contractors in their industry with Federal Government contracts. Anyone seeking LB Federal government contractors to distribute material and event information should be referred to this directory. The Directory of Federal Government Prime Contractors with Subcontracting Plans is available 24 hours a day/7 days a week at www.sba.gov search Subcontracting.

7. How Does A CMR Assist SB Marketing their Products and Services?

To ensure every customer receives the same coaching and development opportunities CMRs will refer SB to SBA's Learning Center and SOARs for training courses and videos on marketing strategies and tools available 24 hours a day/7 days a week at www.sba.gov. SBs seeking assistance with locating businesses to market their products and services will be referred to Directory of Federal Government Prime Contractors with Subcontracting Plans, SAM, and SubNet. CMRs will refer SBs to the Dynamic Small Business Search (DSBS) as a marketing tool to those who would like to have their businesses visible to businesses seeking SB.

Chapter 3

Assessing Compliance with the Subcontracting Program

1. Why does SBA Assess Compliance with the Subcontracting Program?

The purpose of a Compliance Review (CR) is to determine whether the LB prime complies with its post-award subcontracting roles and responsibilities outlined in the subcontracting plan to ensure SB Subcontracts are being awarded. The CR also may assess the prime's adherence to a Corrective Action Plan if applicable, and the Subcontracting Program's rules, processes, and procedures. The information obtained during the assessment will identify if the firm needs assistance with understanding their roles and responsibilities and if they have any areas of non-compliance with the Subcontracting Program that needs to be corrected. A rating is given indicating the level of compliance or non-compliance.

2. Who Receives a Compliance Review?

Federal Government LB Prime Contractor awarded a contract with a SB Subcontracting Plan is eligible for a compliance review. A CR can be performed on-site at the Federal Government Agencies or LB prime's facilities or virtual. If selected for an on-site CR SBA or its designee will notify the Compliance Review recipient's Government POC listed in the Federal Government's System for Award Management (SAM) profile via email using the email address listed in SAM. The Government POC will receive notification 90 days or more before the CR date. The CR notification will provide the CR details which at a minimum include the CR date, time, location, type, information needed and processes to be taken. SBA or its designee will follow up the email with a telephone call to the Government POC listed in SAM.

3. What is the Process of the Compliance Review?

The CMR must receive approval from the SCPM to perform a CR. The minimum requirements of a LB CR are outlined in 13CFR§125.3 (f). The processes to obtain information needed to fulfill those requirements include but are not limited to a review of the LB prime's contract files; correspondence that is directly or indirectly related to the contract, IT systems, Subcontracting methods, and procedures. The CR process also includes but is not limited to; the firm registering in SubNet and uploading documents to the Federal Government System, an entrance and exit briefing, interview of staff, review of eSRS to determine if any subcontract reports are delinquent, review of submitted subcontract reports in eSRS to ascertain subcontract accomplishments towards goals, a comprehensive review of LB adherence to the Subcontract clauses in the contract and contract performance toward the subcontract goals, a review of SubNet to see if the firm has posted SB opportunities, review of FPDS-ng to gather contract award data, and communications with the Federal Agency who awarded the contract.

Chapter 3

Assessing Compliance with the Subcontracting Program (Continued)

3. What is the Process of the Compliance Review? Continued

Once the CR is complete, a CR report which is a summary of the CR and includes compliant and non-compliant items found during the assessment and a rating indicating the level of compliance or non-compliance will be given to the LB. If the organization receives a rating of "Satisfactory" or above no FCR is required.

Ratings of Satisfactory or above cannot be given to any organization that has deficiencies found during the CR.

If the CMR or designee will be issuing a rating of "Satisfactory," no review from the SBA SCPM or designee is required before issuing the CR report and rating letter to the organization.

If the CMR or designee will be issuing a rating that is above "Satisfactory," before issuing the CR report, the report is sent to SBA's SCPM or designee for review and approval.

If the CMR or designee will be issuing a rating that is below "Satisfactory", no review from the SBA SCPM is required before issuing the CR report and rating letter to the organization. However, that is an indication of non-compliance, and the following is required; a Corrective Action Plan (CAP) within 30 days of the CR report date, mandatory attendance of SBA's Subcontracting Orientation, Assistance and Reviews (SOAR) Training Program (see chapter 4) within three months of the CR and a Follow-up CR (FCR). The CMR shall inform the SCPM of all CRs with a rating below "Satisfactory."

The CR details and rating is provided to the Federal Government Agency who awarded the contract Head of Contracting, and Office of Small Disadvantaged Business Utilization (OSDBU). The LB CR shall be documented in the firm's Federal Government's past performance record in Contractors Performance Assessment Reporting System (CPARS) or any successor system under Subcontracting and added to the Federal Government contract file.

CRs are randomly selected for audit.

4. What is a Corrective Action Plan (CAP)?

If any deficiencies were found during the CR, the organization is required to submit within 30 days of the compliance review rating letter date, a corrective action plan (CAP). The CAP provides a rationale for opposing and/or a plan that outlines a schedule for correction of the deficiencies. The CAP is submitted to the SBA Area Office in the area where the organization operates via email or any other method designated by SBA, the email address is indicated in the compliance review rating letter.

The CMR or its designee will review the CAP to ensure it acknowledges awareness of and has an acceptable schedule to correct all deficiencies indicated in the CR Report.

Chapter 3

Assessing Compliance with the Subcontracting Program (Continued)

4. What is a Corrective Action Plan (CAP)? Continued

If it doesn't the CMR will contact the prime and communicate the CAP deficiencies. Once all deficiencies have an acceptable date of correction SBA will acknowledge receipt of the CAP.

The organization is not required to include details of its corrective actions, but, if the organization has included details of the corrective actions, SBA's acknowledgment of receipt of the CAP in no way should be seen as an agreement to the solution. SBA can't advise an organization on the actions, process or procedures it should take to correct any deficiency.

To ensure corrective actions have been taken to eliminate the deficiencies the Follow-up CR (FCR) will be conducted within six months to one year of the date SBA's acknowledging receipt of the CAP.

SBA will keep the Federal Agency who awarded the contract abreast of the organization's adherence to correcting the deficiencies. If the LB refuses to provide or address all deficiencies in the CAP a delinquent CAP letter will be sent advising the organization that they have 15 days from the date of the delinquency letter to comply with the Federal government regulation. If the CAP is not received in the allotted time frame the case is escalated to the SCPM who will inform the Director of GC and work with OGC and the Federal Agency who awarded the contract for resolution.

5. What is a Follow-Up Compliance Review (FCR)?

The FCR is a review of the areas that were found to be deficient during the initial CR or previous FCR. The purpose of an FCR is to ensure the necessary steps have been implemented to eliminate the deficiencies and come into compliance with the SB Subcontracting Program's rules, regulations, processes, and procedures. If the FCR identifies that the deficiencies have been corrected the rating will be changed to "Satisfactory."

The FCR details and rating is provided to the Federal Government Agency who awarded the contract's Head of Contracting, and Office of Small Disadvantaged Business Utilization (OSDBU). The LB CR shall be documented in the firm's Federal Government's past performance recorded in CPARS under Subcontracting and added to the Federal Government contract file.

6. What Happens If a LB Receives a FCR and has not Eliminated Deficiencies?

If non-compliance is found during the first FCR, a final FCR will be scheduled within six months of the initial FCR completion date. If the deficiencies have not been corrected in the time allotted the rating will be "Unsatisfactory." The case is escalated to the SCPM who will inform the Director of GC and work with OGC and the Federal Agency who awarded the contract for resolution or to begin accessing Liquidated Damages.

Chapter 3

Assessing Compliance with the Subcontracting Program (Continued)

7. What is the Compliance Review Process when Other Agencies Conduct the Review?

SBA's CR and FCR processes, procedures and standardized documentation are to be used by the Federal Government Agencies whom SBA has established agreements to conduct comprehensive compliance reviews. Copies of these agreements will be published on http://www.sba.gov.

Chapter 4

Subcontracting Orientation, Assistance and Reviews (SOAR) Training Program

1. What is the SOAR Training Program?

The SOAR training fulfills the training requirement outlined in 13CFR§125.3 (e). The SOAR Training is designed to provide awareness and understanding of the post-award SB Subcontracting Program's roles, responsibilities and help tools. SOAR training will be provided on an array of topics that provide guidance on how to comply with the Subcontracting Program's post-award regulation, processes, and procedures.

2. Who Should Attend SOAR Training?

SOAR training is mandatory for any firm that receives a CR rating below "Satisfactory." A firm that receives a CR rating below satisfactory will need to complete SOAR training indicated in the CR report within three (3) months of the CR and upload their SOAR training certificates in SubNet.

The SOAR training is highly recommended for the LB prime and subcontractor's personnel involved in developing proposals for, pursuing, implementing, administering, and managing Federal Government Contracts with a Subcontract Plan. This includes those involved in pre-award activities, subcontract administration, project management, awarding subcontracts, and building a subcontracting plan.

It is further recommended for Federal Government Employees responsible for awarding contracts with and monitoring the performance of a Subcontracting Plan, contractors with the clause Utilization of Small Business Concerns and SB that needs assistance with utilizing Subcontracting tools.

SOAR training refresher is recommended every three (3) years. Taking the training shows a good faith effort to understand the roles and responsibilities of the Subcontracting Program. Training certificates will be provided to all training participants. Continuous Learning Points (CLP) will be provided to all Federal Government Employees who attend SOAR training.

3. How will SOAR Training be Provided?

SOAR training will be provided via video training, and periodic social media streaming, web and, telephone conference, and in person to ensure we provide every customer with the same quality information. When conducting SOAR training, SBA's AO will utilize standardized training material and guidance approved by the SCPM.

For transparency and to equip our customers for success, the standardized guidance and training material will be available on SubNet's Resource page for the public to view.

If there is a live SOAR training the schedule will be published on SBA's website three weeks in advance of the training at <u>SBA's website https://www.sba.gov/</u> and on SubNet's Resource page.

Abbreviations

AD-Area Director

CFR-Code of Federal Regulation

CMR-Commercial Marketing Representative

CR-Compliance Review

DAD-Deputy Area Director

DSBS-Dynamic Small Business Search

FAR-Federal Acquisition Regulation

FCR-Follow-Up Review

HQ-Headquarters

LB -Large Business

OSDBU- Office of Small Disadvantaged Business Utilization

POC-Point of contact

SAM- System for Award Management

SB-Small Business

SCPM-Subcontracting Program Manager

SubNet-Subcontracting Networking System